

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RANDALL SCOTT, et al.,

Plaintiffs,

v.

MARK WHITING,

Defendant.

Case No. 21-cv-06057-PJH

**ORDER GRANTING MOTION TO  
REMAND**

Re: Dkt. No. 14

Before the court is plaintiffs Randall and Shannon Scotts' motion to remand this case to the Superior Court of California. Defendant Mark Whiting filed a statement of non-opposition to the motion. The court finds that the motion is suitable for decision without oral argument and VACATES the October 7, 2021, hearing. Having read plaintiffs' papers and carefully considered their arguments and the relevant legal authority, the court GRANTS the motion for remand.

**BACKGROUND**

On June 8, 2021, plaintiffs initiated this action against defendant in San Francisco Superior Court. Dkt. 1, Ex. A. (Compl.). In their complaint, plaintiffs allege that defendant's negligent operation of a motor vehicle in San Francisco led to an accident on Lombard Street wherein plaintiff Randall Scott was seriously injured and his motorcycle was damaged. On August 5, 2021, defendant filed his answer to the complaint in San Francisco Superior Court. On the same day, defendant filed the notice of removal in this court.

Defendant filed his notice of removal on the basis of diversity jurisdiction under

1 Title 28 U.S.C. § 1332. Dkt. 1. Defendant represented that he was a citizen of Hawaii.  
 2 Dkt. 1 at ¶ 8.

3 On August 24, 2021, plaintiffs filed the instant motion to remand, contesting that  
 4 defendant is a California citizen, not a resident of Hawaii, and there is thus no diversity  
 5 for purposes of jurisdiction. Dkt. 14. On September 7, 2021, defendant filed a statement  
 6 of non-opposition to plaintiffs' motion to remand. Dkt. 15.

## 7 DISCUSSION

### 8 A. Legal Standard

9 A federal district court has original jurisdiction over all civil actions where the  
 10 amount in controversy exceeds \$75,000 and is between citizens of different states. 28  
 11 U.S.C. § 1332(a)(1) ("The district courts shall have original jurisdiction of all civil actions  
 12 where the matter in controversy exceeds the sum or value of \$75,000, exclusive of  
 13 interest and costs, and is between . . . citizens of different States"). As a general matter,  
 14 a defendant may remove an action to federal court if such court would have original  
 15 jurisdiction over such action. 28 U.S.C. § 1441(a) ("Except as otherwise expressly  
 16 provided by Act of Congress, any civil action brought in a State court of which the district  
 17 courts of the United States have original jurisdiction, may be removed by the defendant  
 18 or the defendants, to the district court of the United States for the district and division  
 19 embracing the place where such action is pending.").

20 Title 28 U.S.C. § 1441(b)(2), however, provides that an action may not be  
 21 removed solely on diversity grounds if any served defendant to such action is a citizen of  
 22 the forum state. 28 U.S.C. § 1441(b)(2) ("A civil action otherwise removable solely on the  
 23 basis of the jurisdiction under section 1332(a) of this title may not be removed if any of  
 24 the parties in interest properly joined and served as defendants is a citizen of the State in  
 25 which such action is brought."); Spencer v. U.S. Dist. Court for N. Dist. of Ca., 393 F.3d  
 26 867, 870 (9th Cir. 2004) ("It is thus clear that the presence of a local defendant at the  
 27 time removal is sought bars removal.") (citing Title 28 U.S.C. § 1441(b)).  
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**B. Analysis**

Here, defendant removed this action from San Francisco Superior Court in violation of Title 28 U.S.C. § 1441(b)(2), claiming to be a citizen of Hawaii. Plaintiffs, however, provide a robust record demonstrating that defendant is, in fact, a resident and citizen of California based on (1) the San Francisco address of his vehicle registration, (2) his homeowners' tax exemption for his San Francisco residence at the same address, (3) his voter registration at the same address, (4) the San Francisco headquarters of the business he founded, and (5) his continued designation as the agent for service of process for eight business entities at his San Francisco business address. Dkt. 14. The court finds that this evidence, along with a lack of any evidence demonstrating defendant's Hawaii citizenship, is sufficient circumstantial evidence of defendant's California citizenship. The defendant's statement of non-opposition to the motion to remand suggests the correctness of the court's conclusion that there is no diversity of citizenship supporting this court's subject matter jurisdiction and removal was not proper in the first instance.

**CONCLUSION**

For the above reasons, the court GRANTS plaintiffs' motion to remand. The court directs the clerk to remand this action to the San Francisco County Superior Court.

**IT IS SO ORDERED.**

Dated: September 15, 2021

/s/ Phyllis J. Hamilton

PHYLLIS J. HAMILTON  
United States District Judge